



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use)**
- **WAC 458-20-209 (Farming for hire and horticultural services performed for farmers)**
- **WAC 458-20-210 (Sales of agricultural products by farmers)**

Date last reviewed: **May 30, 2000**

Current reviewer: **Mark Mullin**

Date current review completed: **November 15, 2002**

Briefly explain the subject matter of the document(s):

- **WAC 458-20-122 (Rule 122) explains the application of business and occupation (B&O) and retail sales taxes to sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. It also provides a sample exemption certificate to be used to document the sales tax exemption provided by RCW 82.08.0259 for sales of purebred livestock used for breeding purposes.**
- **WAC 458-20-209 (Rule 209) provides tax-reporting information to persons engaging in farming for hire or performing horticultural services for farmers.**
- **WAC 458-20-210 (Rule 210) explains the application of B&O and retail sales taxes to sales of agricultural products by farmers.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)



YES	NO	
X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following statutory changes have been made subsequent to the previous review of these rules:

- **RCW 82.04.213, which defines "agricultural product" and "farmer," was amended by chapter 118, Laws of 2001. The definition of "agricultural product" was revised to cross-reference the definition of "pet animals" in RCW 16.70.020. The definition of "farmer" was revised to remove the exclusion for persons using agricultural products as ingredients in a manufacturing process. The definition of "agricultural product" was also revised by chapter 97, Laws of 2001 to include short-rotation hardwoods.**
- **RCW 82.04.260, which provides, among other things, special B&O tax rates for persons manufacturing certain products, was amended by chapter 25, Laws of 2001 to provide a special manufacturing B&O tax rate for persons manufacturing and/or selling certain dairy products.**
- **RCW 82.04.330, which provides a B&O tax exemption for wholesale sales of agricultural products, was amended by chapter 118, Laws of 2001 to provide that the exemption applies to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. The legislation also provides that the exemption does not apply to any person selling manufactured substances or articles.**
- **RCW 82.08.0259 and 82.12.0261, which provide a sales and use tax exemption for sales of purebred livestock for breeding purposes, was amended by chapter 118, Laws of 2001**



to delete the reference to "purebred" and to cross reference the definition of "livestock" in RCW 16.36.005.

- RCW 82.08.880 and 82.12.880, providing a sales and use tax exemption for animal pharmaceuticals, were enacted by chapter 17, Laws of 2001.
- RCW 82.08.890 and 82.12.890, providing a sales and use tax exemption for dairy nutrient management equipment and facilities, were enacted by chapter 18, Laws of 2001. This legislation also provides a sales and use tax exemption for anaerobic digesters. However, this information does not need to be incorporated into these rules at this time because there are no anaerobic digesters in this state, and there do not appear to be any plans to establish any anaerobic digesters in the near future.
- RCW 82.08.910 and 82.12.910, providing a sales and use tax exemption for propane and natural gas used to heat structures housing chickens, were enacted by chapter 25, Laws of 2001.
- RCW 82.08.920 and 82.12.920, providing a sales and use tax exemption for chicken bedding materials, were enacted by chapter 25, Laws of 2001.
- RCW 82.19.050, which provides exemptions from the litter tax, was amended by chapter 118, Laws of 2001 to provide an exemption for wholesale sales of agricultural products that are exempt from B&O tax under RCW 82.04.330.

The following interpretive statement not identified in the previous review of these rules should be incorporated into these rules:

- ETA 559.08.214 (Sales and Rentals of Fruit Bins). This document explains when retail sales tax applies to sales and rentals of fruit bins.

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

While Rules 122, 209, and 210 are clear and concise, Rules 122 and 210 can be rewritten and reorganized in a more clear and concise manner by combining them into one rule. This would eliminate redundant information. Combining both rules into a single rule would also provide information in a more efficient and user-friendly manner by reducing the need to refer to multiple documents for information about sales of tangible personal property for farming and sales of agricultural products by farmers.

The following additional issues should be addressed or incorporated into a combined Rule 122/210:

- Information about purchases for dual purposes should be included. For example, a farmer may purchase twine for binding bales of hay where some of the bales of hay will be resold and some used to feed the farmer's livestock.
- Information about the taxability of farmers using agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process should be included.
- Information about the M&E exemption for farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process should be included.



- Information about how litter tax applies to sales of agricultural products and products manufactured by farmers using agricultural products that they have grown, raised or produced should be included.
- Information on the special B&O tax rate for manufacturing fresh fruits and vegetables should be included.

The following additional issue should be addressed or incorporated into Rule 209:

- Information about the tax application of tree and/or stump removal from existing orchards.

4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **While the following are not now addressed in these rules, they should be addressed when these rules are next revised. The statutes that are currently implemented are identified in the previous review of these rules.**

- RCW 82.04.4459 (Credit -- Field burning reduction costs)
- RCW 82.08.840 (Exemptions -- Machinery, equipment, or structures that reduce field burning)
- RCW 82.08.880 (Exemptions -- Animal pharmaceuticals)
- RCW 82.08.890 (Exemptions -- Dairy nutrient management equipment and facilities)
- RCW 82.08.900 (Exemptions -- Anaerobic digesters)
- RCW 82.08.910 (Exemptions -- Propane or natural gas to heat chicken structures)
- RCW 82.08.920 (Exemptions -- Chicken bedding materials)

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- ETA 559.08.214 (Sales and Rentals of Fruit Bins).

Court Decisions:

- *Dep't of Rev. v. Schaake Packing Co.*, 100 Wn.2d 79, 666 P.2d 367 (1983). The issue was whether the taxpayer's feed mixing operation qualified for the B&O tax exemption provided by RCW 82.04.330.
- *Sumner Rhubarb Growers' Ass'n v. State*, 55 Wn.2d 781, 350 P.2d 478 (1960). The issue was whether the taxpayer, a non-profit cooperative marketing association, was a person engaged in business and subject to B&O tax.

Board of Tax Appeals Decisions (BTAs):

- *Alf Christianson Seed Co., Inc. v Dep't of Rev.*, BTA Docket No. 28880 (1985). The primary issue in this appeal was whether the conditioning of seed is a "manufacturing" activity.



Appeals Division Decisions (WTDs):

- **Det. No. 99-198, 19 WTD 463 (2000) and Det. No. 99-198R, 19 WTD 468 (2000).** The issue in these determinations was whether the sale of liquid eggs produced by the taxpayer was exempt from B&O tax under RCW 82.04.330.
- **Det. No. 93-073, 12 WTD 593 (1993).** The issue was whether taxpayers' income from providing custom combining equipment, labor, and services to other persons was subject to service B&O tax.
- **Det. No. 00-106, 20 WTD 84 (2001).** The issue was whether the taxpayer, a licensed dealer and applicator of chemicals used in agriculture, was performing its spray services for a "farmer" when it provided such services: (1) to a packing operation; (2) under a processor's grower storage contract; (3) to a processor/grower; or (4) to a processor after its purchase of the agricultural product.
- **Det. No. 87-266, 4 WTD 7 (1987).** The issue was whether the taxpayer's income from "custom feeding" was exempt from B&O tax under RCW 82.04.330.
- **Det. No. 00-107, 20 WTD 98 (2001).** The issues included whether bin charges received by the taxpayer from juice processors were subject to service and other activities B&O tax.
- **Det. No. 00-046, 19 WTD 971 (2000).** The issue was whether the taxpayer's purchases of liquid nitrogen, in which the taxpayer dipped and sprayed cherries and asparagus, were retail sales.
- **Det. No. 90-386, 10 WTD 336 (1990).** The issues were whether the taxpayer was entitled to a sales/use tax exemption for: (1) fertilizer which was applied by spraying trees rather than added to the soil; (2) hydrated lime when the material was used successively as an inhibitor of carbon dioxide in cold storage and as a soil fertilizer; and (3) the use of pear float.
- **Det. No. 91-305S, 11 WTD 281 (1991).** The issue was whether hydrated lime when first used as a post-harvest treatment of fruit to prevent scald, internal breakdown, or decay was exempt from sales and use taxes.
- **Det. No. 92-155, 12 WTD 191 (1993).** The issue was whether the taxpayer's sales of sawdust to ranchers and nurseries qualified for the sales tax exemption for fertilizers.
- **Det. No. 88-188, 5 WTD 327 (1988).** The issue was whether coir yarn was exempt from retail sales tax as a fertilizer.
- **Det. No. 89-266, 7 WTD 349 (1989).** The issue was whether the taxpayer, in the business of boarding and training horses, was entitled to a sales/use tax exemption for feed.

Attorney General Opinions (AGOs):

- **AGO 53-55 No. 185.** The issues were whether retail sales or use tax applies: (1) to purchases of cows by dairy farmers for replacements; or (2) to the sale of such cows by the farmer.
- **AGO 57-58 No. 101.** The issue was whether B&O tax applies to farmers who do custom work regularly or incidentally.

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Special Notice (Sales and Use Tax Exemption to Farmers and Veterinarians for Animal Pharmaceuticals),** originally issued August 1, 2001, and reissued April 2002.
- **Special Notice (Update - Sales and Use Tax Exemption for Animal Pharmaceuticals Sold to Farmers or Veterinarians),** issued October 12, 2001, and June 12, 2002.



- **Special Notice (Tax Changes for Manufacturers of Dairy Products)**, issued August 21, 2001.
- **Special Notice (The Tax Application for Tree and/or Stump Removal from Existing Orchards)**, originally issued August 6, 2000, and reissued April 2002.
- **Special Notice (Dairy Nutrient Management Sales/Use Tax Exemption)**, issued March 12, 2002.
- **Special Notice (Tax Incentives to Reduce Agricultural Burning)**, originally issued June 9, 2000, and reissued April 2002.
- **Special Notice (Farmworker Drinking Water Special Notice)**, originally issued May 2, 2000, and reissued April 2002.
- **Special Notice (Sales and Use Tax Exemption for Farm Worker Housing Revision of Notice Issued March 20, 1996)**, originally issued April 12, 1996, and reissued April 2002.
- **Special Notice (Taxability of Selling Harvested Mushrooms and Other Forest Products)**, originally issued July 1, 1994, and reissued April 2002.
- **Special Notice (Special Manufacturing Rate Extended to Wholesale Fruit and Vegetable Processors)**, originally issued July 1, 1996, and reissued April 2002.
- **Sample letter to apply to the Department of Revenue for the dairy nutrient management sales and use tax exemption.**
- **Washington State Horse Industry Tip Sheet.**

5. Review Recommendation:

- X **Amend**
- Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

The previous review of Rules 122, 209, and 210 recommended that they be retained in their current form because legislation related to the agricultural industry was anticipated in the 2001 legislative session. These rules should now be amended to incorporate recent



legislation and to consolidate information contained in several ETAs. Rules 122 and 210 should be combined into a single rule, eliminating redundant information and reducing the need to refer to multiple documents for information about sales of tangible personal property for farming and sales of agricultural products by farmers.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4